

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ACCOUNTANCY

In the Matter of
Adam M. Charney, C.P.A.
Certificate to Practice No. 20815

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson at 1:30 p.m. on January 20, 2005, at the Office of Administrative Hearings in Minneapolis, Minnesota. Gregory P. Huwe, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota 55101-2134, appeared on behalf of the Board of Accountancy ("the Board"). There was no appearance by or on behalf of the Respondent, Adam M. Charney, CPA, 2705 Monterey Avenue South, St. Louis Park, Minnesota 55416. The record in this matter closed at the conclusion of the prehearing conference on January 20, 2005.

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minnesota Statutes § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Dennis J. Poppenhagen, Executive Secretary, Board of Accountancy, Suite 125, 85 East Seventh Place, St. Paul, Minnesota 55101 (telephone no. (651) 296-7937), to ascertain the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issues in this contested case proceeding are whether or not Respondent failed to report completion of required Continuing Professional Education credits to the Board, in violation of Minnesota Statutes §§ 326A.04, subd. 2, and Minnesota Rules parts 1105.2500 B and 1105.3000; failed to renew his CPA certificate, in violation of Minnesota Statutes § 326A.04; failed to meet a requirement for the issuance or renewal of the person's or firm's certificate, registration, or permit, or for practice privileges, in violation of Minnesota Statutes § 326.08, subd. 5(a)(8); failed to appear at a conference with the Complaint Committee, respond to Board communications, or cooperate with a Board investigation, in violation of Minnesota Rules parts 1105.1200 and 1105.1300; or violated a statute or rule the Board is empowered to enforce, in violation of Minnesota Statutes § 326A.08, subd. 5(a)(1); and, if so, whether disciplinary action should be taken against the Respondent as authorized by Minnesota Statutes §§ 214.10 and 326A.08.^[1]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Board of Accountancy issued the Respondent, Adam M. Charney, a CPA certificate on July 20, 2001.

2. The original Notice and Order for Hearing and Prehearing Conference in this matter was served upon the Respondent by certified and/or first-class mail on October 14, 2004, at 2705 Monterey Avenue S, St. Louis Park, MN 55416.^[2]

3. The Respondent contacted counsel for the Board after receiving the original Notice and Order for Hearing and Prehearing Conference and asked if the prehearing conference scheduled for November 22, 2004, could be postponed due to his medical disability, and counsel for the Board agreed to postpone the prehearing conference.

4. An Amended Notice and Order for Hearing and Prehearing Conference rescheduling the prehearing conference for January 20, 2005, at 1:30 p.m. was served on the Respondent on December 17, 2004, at 2705 Monterey Avenue S., St. Louis Park, MN 55416.^[3]

5. The original and amended versions of the Notice and Order for Hearing and Prehearing Conference mailed to the Respondent both included the following notice:

Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default, that the Board's allegations contained in this . . . Notice and Order may be accepted as true, and its proposed action may be upheld.^[4]

6. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief.

7. The Respondent did not appear at the prehearing conference scheduled for January 20, 2005, or have an appearance made on his behalf. The Respondent also did not contact the Administrative Law Judge between January 20, 2005, and the date on which this Report was issued to provide an excuse for his failure to appear.

8. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default. Pursuant to Minnesota Rules part 1400.6000, the allegations contained in the Amended pNotice and Order for Hearing and Prehearing Conference are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minnesota Statutes §§ 14.50, 214.10, and 326A.08.

2. The Board has given proper notice of the prehearing conference in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The conduct described in the Notice and Order for Hearing and Prehearing Conference constitutes a violation of Minnesota Statutes §§ 326A.04 and 326A.08, subd. 5(a)(1) and (8), and Minnesota Rules parts 1105.1200, 1105.1300, 1105.2500, and 1105.3000. As a result, the Respondent is subject to disciplinary action under Minnesota Statutes §§ 214.10 and 326A.08.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against the Respondent, Adam M. Charney.

Dated: February 14, 2005

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Default.

^[1] The Amended Notice and Order for Hearing and Prehearing Conference also asserted violations of Minnesota Rules parts 1100.0600 and 1100.2200; however, those rules have been repealed.

^[2] See Affidavit of Service by U.S. Mail of C.O. Ransom attached to Notice and Order for Hearing and Prehearing Conference.

^[3] See Affidavit of Service by U.S. Mail of Eileen D. Pearson attached to Amended Notice and Order for Hearing and Prehearing Conference.

^[4] See Original Notice and Order for Hearing and Prehearing Conference and Amended Notice and Order for Hearing and Prehearing Conference, Additional Notice ¶ 1.